IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1328 OF 2022

Mahendra P. Patil Applicant
versus
The State of Maharashtra Respondent

WITH
INTERIM APPLICATION NO.2313 OF 2022
IN
CRIMINAL BAIL APPLICATION NO.1328 OF 2022'

Hareshwar Pagdhare Intervener

In the matter between :

Mahendra P. Patil Applicant
versus
The State of Maharashtra Respondent

Mr.Hrishikesh Mundargi i/by Ms.Swarali Joglekar, Advocate for applicant in Bail Application.
Ms.Yogita Deshmukh, Advocate for applicant in I.A.
Mr.A.D.Kamkhedkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 19th July 2022

PC :

1. The applicant is seeking bail in CR No.I-112 of 2018 registered with Palghar Police Station for offence under Sections 406, 420, 467, 468, 471 of Indian Penal Code and under Section 3 of Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (`MPID Act').

2. The case of prosecution, in short, is that the applicant is a builder/developer in the name and style as Oriental Enterprises. He

introduced scheme of booking/investment in the flats to be constructed by him over land bearing Gat Nos.82/6, 99/2, 100/2 and 118/4 of revenue village Tembhode, Taluka and District Palghar. The purchasers/investors are alleged to have paid amounts to the applicant as per scheme introduced by him and the same is alleged to have been acknowledged by applicant by issuing receipts, promissory notes in his own name and under his own signature. It is It is alleged that accused had accepted Rs.3,70,74,000/-, which included cash of Rs.2,42,75,200/- and cheque of Rs.1,27,98,800/- from several purchasers/investors. The flats were not provided to the purchasers/investors. Initially FIR was registered under Sections 406 ad 420 of IPC and u/s.3 of MPID Act as well as under Sections 3,4 and 8 of Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963. Vide order dated 17th July 2018 the additional provisions were invoked u/s.465, 467, 468, 471 of IPC and Section 4 of MPID Act. The charge sheet was filed.

3. The previous application preferred by applicant was rejected by this Court by order dated 8th February 2019.

4. Vide order dated 8th June 2022 the Trial Court was requested to forward status report of trial. The report dated 22nd June 2022 has been received, which indicate that matter is pending at the stage of framing of charge.

5. Learned advocate for applicant submitted as follows :

(a) The applicant is in custody from 25th May 2018. There is no progress in the trial;

(b) Previous application was rejected by this Court on 8th February 2019. The period of about three years has lapsed thereafter. The trial has not proceeded;

(c) The punishment for offence under Section 406 IPC is three years. The maximum punishment for offence under Section 420 of IPC is Seven Years. Section 465 IPC is punishable with imprisonments of two years. The allegations in respect to the offence u/s.467 and 471 of IPC is that applicant gave duly signed acknowledgments of the amounts received by him and that he gave registered sale deeds with promissory notes bearing his signatures to the investors as proprietor of Orient Plaza. Assuming the allegations to be true, the offence u/s/467, 468 and 471 of IPC could not be made out. The sufficient ingredients as to forgery defined u/s.463 r/w 464 of IPC are not made out. The person who makes the document with his signature and in his own capacity and under his own authority, such document cannot be termed as forgery;

(d) Reliance is placed on the decision of Hon'ble Supreme Court in the case of **Mohammed Ibrahim and others Vs. State of Bihar and another**[1] wherein it is held that condition precedent for offence u/s.467 and 471 is forgery. The condition precedent for forgery is making a false document;

(e) There is no evidence in the charge sheet to show that applicant has created any false document;

(f) Incarceration of a person in custody for prolonged period affects his right under Article 21 of Article of India;

(g) There are no statutory restrictions for grant of bail for the offence invoked in the present case;

(h) The applicant is entitled for bail in accordance with

1 (2009)8-scc-751

Section 436-A of Cr.P.C. Most of the offences are punishable with maximum punishment of seven years. The prosecution has also invoked Section 467 of IPC which is punishable with life imprisonment, however, the said provision is not applicable in the present case.

6. Learned counsel for applicant placed reliance on following decisions :

(i) Satender Kumar Antil Vs. CBI and another[2];
(ii) Sachin Atmaram Vartak Vs. The State of Maharashtra[3];
(iii) Union of India Vs. K.A.Najeeb[4].

7. Learned APP submitted that there is sufficient evidence against applicant. Offence is of serious nature. Merely on the ground that applicant is in custody from 2018, bail may not be granted to the applicant. The offence of forgery is made out. The previous application was rejected by this Court by assigning reasons. No ground to reconsider the application for bail is made out.

8. Learned advocate for complainant opposed the application for bail. It is submitted that trial is delayed by the applicant and other accused. The applicant preferred several applications for bail which were rejected. The Trial Court is required to deal with application for bail and could not proceed with trial. The roznama indicate that case was adjourned on several occasions at the instance of accused. The applicant has not annexed other orders passed by Sessions Court rejecting bail applications. The case involves misappropriation of

2 Misc.Application No.1849 in SLP (Cri.) No.5191, decided on 11-7-2022
3 Bail Application No.430 of 2021 decided on 5-1-2022
4 Criminal Appeal No.98l of 2021 arising out of SLP (Cri.).11616/2019, dtd.1-2-2021

huge amount. The accused has cheated investors to the tune of Rs.4 crores. The accused is involved in forgery. He has prepared documents to induce investors to invest money. There were about 33 investors. Bail should not be granted to the applicant. There were lapses in investigation. Police did not carry out effective investigation.

9. The primary ground urged by the applicant for being released on bail is that he is being incarcerated in custody for a period of more than four years. There is no progress in the trial. It is not clear as to when the trial would be concluded. The report submitted by trial Court mentions that applicant preferred applications for bail. There was pandemic. Matter remained pending at the stage of framing of charge. The fact remains that applicant is in jail since 25th April 2018. Previous application for bail was rejected on merits. However, period of three years has passed thereafter.

10. In the recent decision of Supreme Court in the case of Satender Kumar Antil Vs. CBI and another (supra), the Hon'ble Supreme Court has observed that innocence of a person accused of an offence is presumed through a legal fiction, placing onus on the prosecution to prove the guilt before Court. Thus, it is for that agency to satisfy the Court that arrest made was warranted and enlargement on bail is to be denied. The rate of conviction in criminal cases in India is abysmally low. It appears that this fact weighs on the mind of the Court while deciding the bail application in a negative sense. Courts tend to think that the possibility of a conviction being never to rarity, bail applications will have to be decided strictly, contrary to legal principles. We cannot mix up consideration of a bail application, which is not punitive in nature

with that of a possible adjudication by way of trial. On the contrary, an ultimate acquittal with continued custody would be a case of grave injustice. Criminal Courts in general with trial Courts in particular are the guardian angels of liberty. Liberty as embedded in the code has to be preserved, protected, and enforced by the criminal Courts. Any conscious failure by the criminal Courts would constitute an affront to liberty. It is the pious duty of the criminal Court to zealously guard and keep a consistent vision in safeguarding the constitutional values and ethos. A criminal Court must uphold the constitutional thrust with responsibility mandated on them by acting akin to a high priest.

11. In the case of **Shaheen Welfare Association Vs. Union of India and others**[5], it was observed by Supreme Court that it was necessary to grant relief to those persons who have been deprived of their personal liberty for a considerable length of time without any prospect of trial being concluded in the near future. Undoubtedly, the safety of the community and of the nation needs to be safeguarded looking to the nature of the offences these undertrials have been charged with. But the ultimate justification for such deprivation of liberty pending trial can only be their being found guilty of the offences for which they have been charged. If such a finding is not likely to be arrived at within a reasonable time some relief becomes necessary. The Court was dealing with the cases registered under the provisions of TADA Act. The Court was conscious of the fact that there is embargo for release of prisoners prosecuted for the offences of TADA u/s.20(8) of the said Act. The Supreme Court divided the undertrial prisoners under TADA based on their role/hard core criminals into various classes and by adopting

5 (1996)2-SCC-616

pragmatic and just approach relief was directed to be granted considering gravity of the charges. The Courts were given discretion to consider grant/refusal of bail based on antecedents and on conclusion that there is no likelihood of harm to lives of complainant and others in the event of their release.

12. In the case of **Sanjay Chandra Vs. CBI**[6], it was observed that object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson. The grant or denial is regulated to a large extent by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him,

6 AIR-2012-SC-830

pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required.

13. In the case of **Thana Singh Vs. Central Bureau of Narcotics**[7], it was observed that the accused was languishing in prison for more than 12 years and awaiting his trial for the offences under the provisions of NDPS Act. He was consistently denied bail. The maximum punishment for the offence was 20 years and he remained in detention for the period exceeding one half of the maximum period of imprisonment. The Court issued directions on various issues, which would be of assistance to conclude trials pending in Courts expeditiously.

14. In the case of **Hussain and another Vs. Union of India**[8], it was observed that the Supreme Court has given directions in number of cases about speedy conclusion of trials. Speedy trial is part of reasonable, fair and just procedure guaranteed under Article 21 of Constitution of India. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. If the accused is in custody for a grave offence such person may not be released if trial is delayed. While a person in custody for a grave offence may not be released if trial is delayed, trial has to be expedited or bail has to be granted in such cases. The Court issued

7 (2013)2-SCC-590
8 (2017)5-SCC-702

directions and one of them was, as a supplement to Section 436-A but consistent with the spirit thereof, if an undertrial has completed period of custody in excess of the sentence likely to be awarded if conviction is recorded, such undertrial must be released on personal bond. Such an assessment must be made by the Trial Courts concerned from time to time. Timely delivery of justice is a part of human rights. Denial of speedy justice is a threat to public confidence in the administration of justice.

15. In Abdul Rehman Antulay Vs. R.R.Nayak (1992)1-SCC-225, while holding that speedy trial at all stages is part of right under Article 21. In the case of Hussainara Khatoon Vs. State of Bihar (1995)5-SCC-326, it was observed that general orders for release of undertrials without reference to specific fact situations in different cases may prove to be hazardous. While there can be no doubt that undertrial prisoners should not languish in jails on account of refusal to enlarge them on bail, for want of their capacity to furnish bail, these are matters to be dealt with on case to case basis keeping in mind guidelines laid down by Court. Sympathy for undertrials who are in jail for long time on account of the pendency of cases, has to be balanced having regard to the impact of crime.

16. In Vivek Kumar Vs. State of U.P. (2000)9-SCC-443, bail was granted to accused by Supreme Court on the ground that it is quite a long period that he is in custody. In Babba Vs. State of Maharashtra (2005)11-SCC-569, the accused was in custody for a long period for offence under TADA Act. In Paramjit Singh Vs. State (NCT of Delhi), the Supreme Court granted bail. The accused was prosecuted under TADA Act. Earlier the application was rejected and trial was

expedited. There was no progress in trial. In the case of Angela Sontakke Vs. State of Maharashtra (2021)3-SCC-723, the Supreme Court granted bail to the accused facing prosecution under UAPA Act on the ground that accused is in custody for five years.

17. In the case of Union Of India Vs. K. A. Najeeb (supra) the Supreme Court has considered the stringent conditions for grant of bail under Section 43-D(5) of UAPA Act. The bail granted by High Court on the ground that the accused was under incarceration for long period unlikelihood of trial.

18. In the case of Supreme Court Legal Aid Committee (supra), the Court had directed proviso for grant of bail that benefit of direction in clause (ii) and (iii) shall not be available to those persons who are in the opinion of the Trial Court for the reasons to be stated in writing likely to tamper with evidence or influence the prosecution witnesses. In the case of Shaheen Welfare Association (supra), it was cautioned that bail can be granted unless Court comes to conclusion that their antecedents are such that releasing them may be harmful to the lives of complainant, family members of complainant or witnesses. In the case of Hussainara Khatoon, it was observed that sympathy for undertrials who are in jail for long terms on account of pendency of cases, has to be balanced having regard to impact of crime. The Division Bench of this Court, in the case of NIA Vs. Areeb Majeed has observed that in cases under Special Acts, parameters for grant of bail are more stringent and they remain in custody. The courts are required to perform balancing act, so as to reach a golden mean in between the rights of an individual and those of society at large. The court has to look into those aspects while granting bail even on the ground that the undertrial is in prolonged custody. In

the light of observations of Supreme Court and this Court as stated above, the Court has to perform balancing act. The sympathy for undertrials who are in custody has to be balanced with gravity/magnitude of crime, likelihood of threat to witnesses. The analysis may be based on facts of each case.

19. The settled principle of law is that prolonged custody affects fundamental rights under Article 21 of Constitution of India. There is no debate that incarceration in custody for long period without trial or completion of trial affects personal liberty guaranteed under Article 21 of Constitution of India.

20. Thus, considering the above circumstances that applicant is in custody for a period of four years and it is not clear as to when the trial would be concluded, bail can be granted to applicant.

ORDER

(i) Criminal Bail Application No. 1328 of 2022 is allowed and stands disposed of.

(ii) Applicant is directed to be released on bail in connection with C.R. No. I-112 of 2018 registered with Palghar Police Station on executing P.R. Bond in the sum of Rs. 50,000/- with one or more sureties in the like amount.

(iii) Applicant shall report concerned police station once in a month on every first Saturday between 11.00 am to 1.00 pm till further order.

(iv) Applicant shall not tamper with the evidence.

(v) Applicant shall attend the trial Court on every date of hearing of the case unless exempted by the Court;

(vi) Applicant shall deposit the passport with the investigating officer. If he does not have passport he shall file affidavit in that regard before the trial Court while executing bail bond.

(vii) Applicant shall not leave India without prior permission to the trial Court.

(viii) Trial is expedited.

(xi) The trial Court shall make an endevour to conclude the trial within a period of two years from the date of receipt of this order.

(x) Interim Application is disposed of.

(PRAKASH D. NAIK, J.)

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